



**9110-04-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2017-0146]**

**RIN 1625-AA87**

**Security Zones; Port Canaveral Harbor, Cape Canaveral Air Force Station, FL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is revising a security zone to extend the geographical boundaries of the permanent security zone at Port Canaveral Harbor. This action is necessary to ensure the security of vessels, facilities, and the surrounding areas within this zone. This regulation prohibits persons and vessels from entering, transiting through, anchoring in, or remaining within the security zone unless authorized by the Captain of the Port (COTP) Jacksonville or a designated representative.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0146 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Allan Storm, Sector Jacksonville, Waterways Management Division, U.S.

Coast Guard; telephone (904) 714-7616, email Allan.H.Storm@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

|        |                                 |
|--------|---------------------------------|
| CFR    | Code of Federal Regulations     |
| DHS    | Department of Homeland Security |
| FR     | <b>Federal Register</b>         |
| NPRM   | Notice of proposed rulemaking   |
| §      | Section                         |
| U.S.C. | United States Code              |

**II. Background Information and Regulatory History**

On October 3, 1988, the Coast Guard published a final rule creating a permanent security zone at Port Canaveral Harbor, Cape Canaveral, Florida, entitled, “Security Zone; Port Canaveral Harbor, Cape Canaveral, FL” (53 FR 38718) to safeguard the waterfront and military assets along the U.S. Navy’s Poseidon Wharf inside the southeast portion of Port Canaveral Harbor’s Middle Basin. This waterfront area is located on Cape Canaveral Air Force Station (CCAFS), a U.S. Air Force military installation. Additionally, the northern and northeast portion of the Middle Basin’s waterfront is located almost entirely on CCAFS property, and within this area are piers utilized by the U.S. Air Force and U.S. Army. CCAFS routinely conducts operations critical to national security.

The U.S. Navy requested an amendment to the current regulation in 33 CFR 165.705(b) to expand the geographical boundaries to include the northern and northeastern portion of the Middle Basin of Port Canaveral Harbor in order to ensure the safety and security of military assets and infrastructure along the entire CCAFS waterfront. In response, on October 3, 2017, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled, “Security Zones;

Port Canaveral Harbor, Cape Canaveral Air Force Station, FL” (82 FR 46007). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to revising the security zone. During the comment period that ended November 3, 2017, we received 3 comments.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority 33 U.S.C. 1231. The COTP Jacksonville has determined it is necessary to expand the security zone in the Middle Basin of Port Canaveral Harbor to ensure the security of military assets and waterfront facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents or other causes of a similar nature.

### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received 3 comments on our NPRM published October 3, 2017. One comment was in support of the rule. The other two comments provided recommendations and feedback to the rule. One comment provided a recommendation to conduct a safety study to ensure that the likelihood for a collision has not increased. The Coast Guard does not intend to conduct a safety study for the revised security zone, as there have been no safety concerns raised during discussions within the port community; including the Canaveral Pilots Association, the Canaveral Port Authority, U.S. Navy, and Brevard County Sheriff’s Office. The other comment inquired about the inclusion of the U.S. Army Corps of Engineers (USACE) to revise the restricted area outlined in 33 CFR 334.530 to match the Coast Guard’s expanded security zone. The Coast Guard intends to make a recommendation to USACE to revise the restricted area in 33 CFR 334.530. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule expands the geographical boundaries of the current regulated area in 33 CFR 165.705(b) to include the navigable waters of the Port Canaveral Harbor's Middle Basin. This revision redesignates § 165.705(b) to new § 165.705(a)(2).

The rule also made the following amendments: (1) changed the title of the existing regulation in 33 CFR 165.705 from "Port Canaveral Harbor, Cape Canaveral, Florida" to "Security Zones: Port Canaveral Harbor, Cape Canaveral Air Force Station, FL;" (2) added a new paragraph (c) and changed the title to "Regulations;" (3) redesignated existing paragraph (d) as new paragraph (c)(1) with minor non-substantive changes; (4) redesignated existing paragraph (c) as new paragraph (c)(2) with minor non-substantive changes; (5) and added a new paragraph (c)(3). Lastly, we added a new paragraph (b), entitled "Definitions" to define the term "designated representative."

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the

requirements of Executive Order 13771.

This regulatory action determination is based on the fact that although persons and vessels may not enter, transit through, anchor in, or remain within the security zone without authorization from the COTP Jacksonville or a designated representative, they may operate in the navigable water adjacent to the security zone and the Federal channel.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or

Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves expanding the geographical boundaries of a permanent security zone that prohibit entry within certain navigable waters of the Port of Canaveral Harbor's Middle Basin. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to

coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measure, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.705 to read as follows:

#### **§ 165.705 Security Zones: Port Canaveral Harbor, Cape Canaveral Air Force Station, FL.**

(a) Regulated areas--(1) Security Zone A. East (Trident) Basin, Port Canaveral Harbor, at Cape Canaveral Air Force Station, Brevard County, Florida: All waters of the East Basin north of latitude 28°24'36"N.

(2) Security Zone B. Middle Basin, Port Canaveral Harbor, at Cape Canaveral Air Force Station, Brevard County, Florida: All waters within the following coordinates inside the Middle Basin: Starting at Point 1 in position 28° 24' 54.49"N, 080° 36' 39.13"W; thence south to Point 2 in position 28° 24' 53.27"N, 080° 36' 39.15"W; thence east to Point 3 in position 28° 24' 53.25"N, 080° 36' 30.41"W; thence south to Point 4 in position 28° 24' 50.51"N, 080° 36' 30.41"W; thence southeast to Point 5 in position 28° 24' 38.15"N, 080° 36' 17.18"W; thence east to Point 6 in position 28° 24' 38.16"N, 080° 36' 14.92"W; thence northeast to Point 7 in position



28° 24' 39.36"N, 080° 36' 13.37"W; thence following the land based perimeter boundary to the point of origin. These coordinates are based on North American Datum 1983.

(b) Definitions. The term “designated representative” means personnel designated by or assisting the Captain of the Port (COTP) Jacksonville in the enforcement of the security zone. This includes Coast Guard Patrol Commanders, Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels and federal, state, and local law officers designated by or assisting the COTP Jacksonville in the enforcement of regulated navigation areas and security zones.

(c) Regulations. (1) The general regulations governing security zones found in § 165.33 apply to the security zones described in paragraph (a) of this section.

(2) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the security zone unless authorized by the COTP Jacksonville or a designated representative.

(3) Persons desiring to enter, transit through, anchor in, or remain within the security zone may request permission from the COTP Jacksonville by telephone at 904-714-7557, or a designated representative via VHF-FM radio on channel 16. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Jacksonville or the designated representative.

Dated: March 29, 2018.

Todd C. Wiemers,

Captain, U.S. Coast Guard,  
Captain of the Port Jacksonville.

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